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FEDERAL COMMUNICATIONS COMMISSION  
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Before The  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C.

In re the Matter of )  
 )  
1998 Biennial Review -- Review of the )  
Commission's Broadcast Ownership Rules )  
and Other Rules Adopted Pursuant to Section 202 )  
of the Telecommunications Act of 1996 )  
 )

MM Docket 98-35

TO: The Commission

COMMENTS OF  
GILLIAM COMMUNICATIONS, INC.  
dba WLOK Radio

Gilliam Communications, Inc.

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July 17, 1998

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These comments are submitted in two parts which outline the two distinct ways in which we believe the impact on the radio industry of the Telecommunications Act of 1996 is adverse to the public interest.

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### **Summary**

We believe that the effect of the Telecommunications Act of 1996 on the radio industry has been to reverse the traditional direction of the Federal Communications Commission with respect to ownership by minorities, ownership by women, and diversity of viewpoints. We further believe this change in direction is especially adverse to the public interest in the pluralistic society which exists in America. The Act has helped create a circumstance in which there are far fewer radio owners in markets which many large group owners are now seeking to geographically redefine in ways that increase market size and render ownership by minorities, women, and small businesses increasingly less likely.

Radio group owners, through their ability to impact market definition by The Arbitron Company, are unfairly making it more difficult for smaller entities to compete. Further, the tremendous lowering of restrictions on the number of stations one company may own has severely limited the number of stations available for sale. The long term consequence is that goals once viewed as desirable - ownership by minorities, ownership by women, and diversity of viewpoints - will not exist at the same level as in the past. We believe this consequence is not in the public interest in this country and we therefore urge the Federal Communications Commission, the Department of Justice, and the Federal Trade Commission to take the appropriate steps necessary to reverse these trends which derive to a great extent from the Telecommunications Act of 1996.

### **Background of the Commenting Party**

Gilliam Communications, Inc. is a minority-owned company which operates one AM radio station in Memphis, Tennessee. The station's call letters are WLOK, and no other radio stations are owned by the company. The company has owned WLOK since February, 1977. WLOK has a gospel format and has been recognized by "Religion and Media Monthly", a leading trade publication for religious radio stations, as the top contemporary gospel radio station in America for the past three consecutive years. WLOK was also recognized as the "Gospel Station of the Year" for 1997 by the National Black Programmers Coalition. Additionally, WLOK has received myriad awards for public service and has been a model radio station in terms of serving its community. WLOK in many ways exemplifies the goals which the Federal Communications Commission highly valued prior to the Telecommunications Act of 1996 - local ownership, minority ownership, integration of management with ownership, and community service.

Some of the provisions of the 1996 Act, together with The Arbitron Company's position as a monopolist in the radio ratings industry, have combined to create peril for WLOK and many radio stations in America which are similarly situated to WLOK. Ultimately, if there is no consideration given to these matters by the federal government, the radio industry, which we believe is a separate industry unto itself as has been indicated by the Department of Justice, will have less diversity, fewer viewpoints, and less competition among a small number of large owners in each radio market.

**Part I - Comments pertaining to detriment to the public interest due to ways in which new ownership rules have restricted the possibilities of radio ownership by certain segments of the population.**

Radio ownership by minorities has, in our view, been severely impacted by the Telecommunications Act of 1996. The reason is quite straight forward. The Act permits multiple ownership of radio stations in any given market. As a result, a relatively small number of companies have acquired a very large number of radio stations all around the country. The effect in many individual markets has been the creation of oligopolies. Further, the acquiring companies are often not inclined to sell any of their radio properties even when individual stations are losing money. The overall size and financial wherewithal of the larger companies allows them to hold on to properties that are marginal or unprofitable to speculate on the possible value of those properties in the future. The result is that in many markets there simply are no stations for sale which place a good signal over the primary city in the market.

Gilliam Communications, Inc. has directly experienced this lack of available stations for sale. We have a bank loan commitment in excess of \$1.2 million dollars. We are seeking to purchase an AM station in the southeastern United States in a market which has a 30% or higher African-American population. We secured the services of a reputable broker in January 1998. We identified seven specific markets of interest to us - Baton Rouge, LA; Birmingham, AL; Jackson, MS; Mobile, AL; Montgomery, AL; New Orleans, LA; and Shreveport, LA. As of mid-June, 1998, we have been unable to find any AM station for sale that places a 24 hour signal over any of these markets. The broker has indicated that the companies in these markets do not, at present, wish to sell even their AM properties which are losing money. Gilliam Communications, Inc. has now expanded the number of markets to a total of eleven, and thus far we still have found no available stations. A further concern is that the owners of stations that fit our criteria might, in the environment that has been created by the Telecommunications Act of 1996, seek a price for their properties that is so far above the appraised value that an acquiring company could not meet the debt service of such an acquisition. However, we have not been able even to get to the point of making an offer, because there simply has been no stations for sale in any of the markets in the southeast which we have identified. The potential long term impact of this market circumstance on smaller companies and especially on minorities, could be disastrous, if it continues unabated.

For the reasons outlined above, we believe the Telecommunications Act of 1996 has created market conditions in the radio industry which are incompatible with the goal of ownership by minorities, women and small businesses. Further, if these market conditions continue, we believe that ideals once favored by the FCC - local ownership, integration of management with ownership, minority ownership, diversity of viewpoints - will become merely footnotes in history.

**Part II - Comments pertaining to detriment to the public interest due to metropolitan area redefinition undertaken by radio group owners through their relationship with The Arbitron Company.**

Radio audience measurements are utilized by most major advertisers to determine placement of their radio buys with various radio stations in a market. It is axiomatic in the radio industry that higher ratings lead to greater opportunities for advertising buys, and conversely, that lower audience ratings lead to less sales income. A radio station's income is therefore highly correlated with the station's audience ratings.

The Arbitron Company holds a national monopoly in the radio ratings industry. Since the company has no competition, it is free to set its prices and its policies in whatever way it determines are appropriate to its self-interest.

Radio stations which subscribe to Arbitron ratings have available to them a means by which they can expand the geographic area in which radio ratings surveys are conducted. Arbitron initially utilizes the U.S. Government Metropolitan Statistical Area (MSA) as its "Arbitron Metro", which is the geographic area in which its surveys are conducted. However, Arbitron permits its subscribers to seek redefinition of the metro survey area, and thereby expand that area, upon a request from 75% of its subscribers. The normal result is expansion of the Arbitron Metro such that it is a larger geographic area than the MSA.

The 1996 Act, perhaps inadvertently, creates some incentives for large radio companies to seek redefinition of the Arbitron Metro in a way that makes the metro as large as possible. One of those incentives is that companies are buying stations in outlying suburbs which are not a part of the original metro or MSA, and find it advantageous from a sales standpoint to have the stations identified as being within the metro. This can be achieved by expanding the Arbitron Metro to include the county where the station is located, even though that county is not a part of the MSA. A second incentive is that larger companies tend to buy more powerful stations in terms of coverage area, so that it is competitively desirable to expand the definition of an Arbitron Metro to diminish the competition from lower powered stations which cannot reach the potential audience in the added portion of an expanded metro.

This goal of creating larger metros is facilitated greatly by the Arbitron monopoly in the radio ratings industry. Arbitron utilizes the MSA as its starting point for the geographic area in which ratings surveys will be conducted. However, the Arbitron policy allowing subscribers to seek a redefinition of the metro area by adding counties which are not included in the MSA, results in larger metros which create competitive problems for stations with less power.

Metro redefinition by Arbitron and subscribing radio stations is adverse to the public interest for at least four reasons. First, it ultimately serves to diminish the diversity of viewpoints heard, because smaller station owners, which disproportionately include minorities and women, are less able to compete in an expanded metro area. Secondly, in redefining metro areas, Arbitron does not take into consideration the ethnic makeup of the counties which are added. Since minorities tend to live closer to the inner cities, the Arbitron Metro redefinitions tend to dilute the percentage of minorities in the metro and thereby create a special hardship to minority-oriented, and especially minority-controlled,

radio stations. Thirdly, metro area redefinition causes increases in prices to consumers (buyers of radio commercials), because the larger companies are able to raise their price due to the higher audience percentages that may result in expanded metro areas. Advertisers utilize the Arbitron Metro in deciding their commercial radio buys. When they place their local buys, they are often not interested in distant counties in the metro, but they cannot separate those counties from the metro area ratings. Therefore, ratings of stations which do not reach those counties in the expanded metro area are diluted, which makes them less likely to be bought. This also means the stations with greater power are more likely to have stronger ratings and can raise their rates accordingly. Fourth, many advertising buyers are not aware that the Arbitron Metro may not correspond to the MSA, and they base their perception of the national rank of a particular market on the Arbitron Metro\*. For that reason, markets that miss the cutoff point for the buy (for example, if it is a "top ten" buy) might not have missed the cutoff if the buyer had been aware that the Arbitron rank did not correspond to the U.S. Government rank. Entire markets can be discriminated against via manipulation by Arbitron subscribers of the rank of their particular market. All of these results are adverse to the public interest, and we therefore feel the remedy to these problems falls within the purview of the Federal Communications Commission as well as the Federal Trade Commission and the Department of Justice.

### **Case In Point**

Immediately after the 1980 census, both Arbitron and the United States Government defined the Memphis, Tennessee Metropolitan Statistical Area as consisting of four counties - Crittenden, AR; Desoto, MS; Shelby, TN; and Tipton, TN. Between 1980 and 1990, at the request of subscribers, Arbitron redefined its metro area to consist of seven counties - Crittenden, AR; DeSoto, MS; Fayette, TN; Marshall, MS; Mississippi, AR; Shelby, TN; and Tipton, TN. A purported reason at the time of the redefinition was to "update" the census definition, inasmuch as the government census only occurs every ten years. However, in the 1990 census, when the United States Government defined the Memphis Metropolitan Statistical Area as consisting of five counties - Crittenden, AR; DeSoto, MS; Fayette, TN; Shelby, TN; and Tipton, TN, Arbitron did not redefine its metro area to coincide with the then current government definition. This failure to redefine the metro contradicts the implication made in writing by Arbitron that its metro will correspond to the MSA and will be updated when the census is updated (see footnote).

\*The misperception that the Arbitron Metro corresponds to the U.S. Government definition of an MSA is perpetuated by language contained in the Arbitron report received by advertisers. It states in part "Arbitron Metros generally correspond to the federal government's Office of Management and Budget's (OMB) Metropolitan Areas . . . The OMB updates its Metropolitan Areas every 10 years based on the new dicentennial census data. At that time, Arbitron reviews all radio metro definitions for possible adoption of the applicable OMB definitions."

Today, several Arbitron subscribers are once again considering a process of petitioning Arbitron to expand the Arbitron Metro. There are only five radio companies in Memphis that are Arbitron subscribers. They control approximately 85% of Memphis radio sales and the power of their individual stations in watts is as follows:

KJMS FM	100,000	WMC FM	290,000
WDIA AM	50,000/5,000 nights	WMFS FM	6,000
WEGR FM	100,000	WOGY FM	50,000
WGKX FM	100,000	WREC AM	5,000/5,000 nights
WHRK FM	100,000	WRVR FM	100,000
WJCE AM	10,000/5,000 nights	WRQX	6,000
WMC AM	5,000/5,000 nights	WSRR FM	100,000

**Mean Daytime Average: 73,000 watts**

**Mean Nighttime Average: 69,429 watts**

By contrast, non-subscribers to Arbitron control only about 15% of Memphis radio sales and their power in watts is as follows:

KHLS FM	100,000	WKBL FM	6,000
KWAM	10,000/450 nights	WKRA FM	3,000
KXHT	3,000	WKSL FM	3,000
WBBP	5,000/100 nights	WLOK AM	1,000
WCRV	50,000/500 nights	WPLX AM	1,000
WHBQ AM	5,000/1,000 nights	WMPS AM	2,500/1,000 nights
WSFZ AM	50,000/1,000 nights		

**Mean Daytime Average: 18,423 watts**

**Mean Nighttime Average: 9,312 watts**

The twenty-seven stations listed here are those which, according to Arbitron, originate their broadcast from within the Arbitron Metro.

A redefinition of the Memphis Arbitron Metro to include more counties would expand the market control of the Arbitron subscribers to the competitive disadvantage and detriment of the smaller non-subscribers. This problem is not unique to Memphis. As of this writing, we understand that in twenty-five Arbitron markets subscribing stations have requested market redefinitions this fall. The danger inherent in this process is therefore an imminent one which we believe should be addressed immediately. Otherwise, irreversible damage to the public interest could occur while this matter is being reviewed.

### **Proposed Remedy**

We believe an immediate stay should be placed on Arbitron Metro Area redefinitions scheduled to take place in the fall of 1998, until the FCC, FTC and Department of Justice shall have had an opportunity to review this matter. We believe further that the FCC should begin a formal inquiry into the operations and abuses of the ratings system. Finally, we believe that the Department of Justice and the Federal Trade Commission should look closely at parties utilizing their own self-serving, statistically



inappropriate definition of metropolitan areas for their own competitive advantage rather than utilizing the standard United States Government definition of the MSA. We submit that such parties should be required to utilize the standard United States Government definition of the MSA. They would thereby be prevented from creating the impression that the Arbitron Metro is the MSA and then altering that metro definition to gain competitive advantage.

### **Conclusion**

Due in great measure to the Telecommunications Act of 1996, subscribers to Arbitron radio ratings are generally larger national companies in the radio industry which tend to own the more powerful radio signals in any given market. Those signals usually cover a much wider geographic area than signals owned by smaller companies or by individuals in those markets. The smaller companies and individuals most often cannot afford the high subscription rates charged by Arbitron, which holds a national monopoly in the radio ratings industry. These smaller companies are therefore powerless in the decision to redefine a metropolitan area. Those same smaller companies and individuals are competitively disadvantaged by an expanded metropolitan area definition, because their signals are most often weak or nonexistent in outlying counties that are included in the redefinition. For these reasons, Arbitron, acting together with a small number of station owners/subscribers that control a high percentage of the market, can redefine the market in a way that increases the subscribers' market control thereby creating competitive disadvantage and detriment to the smaller non-subscribers. Advertisers are often not aware that the Arbitron Metro Area is not the MSA. Further, the metro area redefinition is undertaken in self-interest without proper statistical basis in contravention to the objective, economically and statistically-based definition of an MSA by the United States Government. The effect of Arbitron's and the stations' redefinition is to compromise the public interest and to create unfair competition.

The federal government has no vested interest in what comprises a metropolitan statistical area. The government also has available to it the appropriate resources that are needed to fairly and properly define a metropolitan statistical area. For that reason, in cases such as this one, where parties with a clear vested interest, limited resources in comparison with the government, and very limited expertise in metropolitan definition, redefine a metropolitan statistical area to the competitive detriment of smaller entities, the United States Government should intervene to assure fairness and impartiality. Arbitron uses the government MSA as a starting point but then allows it to be revised at the request of parties which have a vested interest in the definition. In effect, radio stations can successfully seek to alter the definition of a metropolitan area among advertisers and advertising agencies as well as others, because buyers of radio commercials utilize the Arbitron definition, rather than the official U.S. Government definition of an MSA, in determining market size and ratings of a radio station within that market. Buyers are misled by the phrase "metro" and are often simply not aware that the Arbitron Metro is not the same as the United States Government's MSA. We believe the United States Government makes a fair and objective determination of what counties constitute the individual metropolitan statistical areas in the United States. Our position is that there is

no logical reason to deviate from the government-defined metropolitan area and that to do so clearly creates an artificial metro area that is misleading to buyers of advertising and that is self-serving for those involved in its creation. For the reasons reflected herein, the government should require that the Arbitron definition of a metropolitan area conform to the government definition and that parties seeking to change that definition should do so by presenting their premises to the United States Government rather than by independently defining what constitutes a metropolitan area in the United States.

#### **Related Matter**

The pricing policy of The Arbitron Company is not a specific issue reviewed in this filing. There are however aspects of the pricing policy that may warrant review by the FTC and the Department of Justice. Arbitron charges separate, distinct prices to each radio station by negotiating with that station's ownership. There is no set price for surveying the entire market which could then be distributed among stations wishing to subscribe. Further, price breaks appear to be determined in large measure by the number of stations owned in the market, the number of stations owned in the country, and the length of the subscription, but as a monopolist, Arbitron does not establish any clear relationship between its price to subscribers and the cost to Arbitron of the services provided. The result is that a smaller company, or an individual station owner, is often required to pay an enormously greater per station rate to subscribe to Arbitron than a larger company. While price breaks per se may not be improper in some instances, the failure by Arbitron to set a total price for its product appears to stem in great measure from the absence of competition in the field of radio ratings. This pricing policy contributes to the absence of influence of smaller owners in other Arbitron policies such as metro area redefinition.

**Comments to the Federal Communications Commission  
pertaining to the Telecommunications Act of 1996.**

**Submitted by:  
Gilliam Communications, Inc.  
dba WLOK Radio  
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A handwritten signature in dark ink, appearing to read 'H.A. Gilliam, Jr.', written over a horizontal line.

**H.A. Gilliam, Jr.  
President/General Manager**

7/16/98  
**Date**